IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.328 of 2000

Senthilvel .. Appellant/Accused

vs.

State by
Station House Officer,
All Women Police Station,
Pondicherry. .. Respondent/complainant

Prayer: This Criminal Appeal has been preferred against the Judgment in C.C.No.245 of 1997 dated 29.2.2000 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Pondicherry.

For Appellant : Mr.C.P.Palanisamy
For Respondent : Mr.M.P.Thangavel
Public Prosecutor (Puducherry)

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.245/1997 on the file of the Court of Chief Judicial Magistrate, Puducherry.

2. The short facts of the prosecution case is that seven months prior to 8.7.1997 at Door No.40, Rangapillai Street, Puducherry, infurthrece of common intention subjected the complainant Malathi to cruelty by beating, also demanding a Hero Honda Motor Cycle, cash of Rs.50,000/-, and a water heater as dowry. A case was registered on the complaint preferred by P.W.1. The case was taken on file by the learned Judicial Magistrate, Puducherry in C.C.No.245/1997 against the A1, husband of the complainant (P.W.1), and A2, mother-in-law of the complainant.

3. On appearance of the accused on summons the copies under Section 207 of Cr.P.C. were furnished to the accused and charges as indicated above were framed. When questioned the accused pleaded no guilty. On the side of the prosecution P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.10 were marked. No material objects were marked.

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4. P.W.1 is the complainant, wife of A1, who would depose that the marriage between herself and A1 took place on 10.11.1995 as per the Hindu customs and at the time of marriage her parents presented 37 sovereign of gold and cash of Rs.50,000/- and other 'Sreethana' properties worth about Rs.40,000/- and the marriage took place at Puducherry and after the marriage she was residing along with her husband. After 15 days of marriage her husband demanded Hero Honda Motor cycle and this was informed by her to her parents and her husband had also demanded cash of Rs.50,000/-. But her(P.w.1) parents have declined to accede to the said demand. She went to her parent's house for Pongal and at that time she was two months of pregnancy. Due to the impact of travel she developed bleeding which resulted in abortion of the fetus in hospital. After treatment her husband returned to his house. A week thereafter she returned to her husband's house along with her mother but she was not permitted to go inside the house but sent out of the house by her husband accusing that she had aborted the child without the permission of her husband. Elders pacified him and after compromise, she was allowed to go inside the house of the accused and that the 1st accused had insisted her to give in writing that only out of her volition she had aborted the child. According to P.W.1, her husband does not allow her to go out of the house and he used to keep her under lock and key and there was no proper food given to her and that she was ill-treated and her mother-in-law kicked her while she was sleeping and she was also compelled to give consent in writing for A1's second marriage. After coming to know about this, her(P.w.1) sister came to her house, but her husband did not permit her to go inside the house. On 29.6.1996 late night the A1 and his mother were discussing about the second marriage of her husband and also planed to kill her, on 30.6.1996 she gave a telegram to her brother Magesh with the help of her neighbour. Her brother came and asked her husband about this. Her husband informed Magesh that he wants to live separately in the house and that she(P.W.1) shall give in writing that she does not like her husband. But she refused to give such a letter and then she went along with her brother to her parent's house. She went to Women Police Cell and complained of the cruelty meted out to her at the hands of her husband. On 8.7.1996 she had preferred a complaint-Ex.P.1 with the Women Police. Ex.P.2 is marriage invitation dated 10.11.1995 between P.W.1 and A1. Ex.P.3 is the letter dated 8.5.1996 written by her to her mother. Ex.P.4 is dated 11.5.1996 written by her to her mother. Ex.P.5 is the letter dated 5.6.1996 written by her to her mother. Ex.P.6 is the letter dated 7.6.1996 written by her to her brother. Ex.P.7 is the letter dated 14.6.1996 written by her to her brother. Ex.P.8 is the letter written by her to her mother.

5. P.W.2 is the mother of the complainant. P.W.2 has deposed to the effect that her husband is working in Malaysia and that the marriage between A1 and the complainant(P.W.1) was solemnized through friends like Balasubraminan and Gandhimohan and that after the solemnization of the marriage her daughter P.W.1 and A1 were living happily for ten or fifteen

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days. Thereafter both A1 & A2 used to comment upon the mode of service rendered by the complainant and scolded her like anything and that she had visited her daughter's house only thrice and that she stayed only for a duration of two hours each and during that time P.W.1 used to complain about the treatment she had received at the hands of the accused and that as requested by P.W.1, she(P.W.2) had also informed this to the senior paternal uncle of A1 and that the accused used to keep her daughter under lock and key and A1 never allowed her to go to purchase milk. On one occasion one of the sisters of P.w.1 was also not allowed to see P.W.1 and that P.W.1 has informed her that the accused were demanding fan and other items. P.W.1 informed that she is not feeling well and hence she was taken to a doctor. She went along with her daughter(P.W.1) to Puducherry for Thaippoosam. When they returned to the house of the accused, they were not allowed to go inside the house. The daughter of A1's sister came and opened the gate after a long time and on seeing P.W.1 and her mother P.W.2, the accused abused them and the said matter was reported to Nattamai at Thittai Village. The accused 1 and 2 compelled P.W.1 to write a letter of release to enable A1 to marry for the second time. The said demand was refuted by her and her daughter(P.w.1). A2 kicked P.W.1 and also teased her. P.W.1 also gave a telegram to Thittai, which was received by her(P.W.2) son. The son of P.W.2 also went to Puducherry and witnessed the ill-treatment meeted out by P.W.1 at the hands of A1.

6. P.W.3 is the elder sister of P.W.1. P.W.3 would depose that P.W.1 and A1 lived together happily for about 15 days after the marriage and in that 15 days P.W.1 and her husband A1 visited her(P.W.3) house three times. Both P.W.1 and her mother came to Puducherry for Thaippoosam and also informed about the ill-treatment meeted out to P.W.1 at the hands of her husband and that she also informed the person who solemnized the marriage and also she visited P.W.1's house with her father and since P.W.1 was very weak, she made a request to A1 and mother of A1 to allow her to take P.W.1 to her house. But they refused to allow P.W.1 along with her and that during the month of Margazhi, P.W.1 was brought by A1 and A2 and others to Thittai for "Thali prithu kattuthal function" and at that time P.W.1 has informed that the accused were demanding one Hero Honda motor cycle, a water heater and cash of Rs.50,000/- But the accused were pacified and were sent back to Puducherry. During her(P.w.3) visit to the house of the accused, P.w.1 was found inside the house under lock and key and she stood at the entrence of the house and spoken to with P.w.1 and returned back and that P.w.1 also informed her that her(P.w.1) dress materials were kept by A1 under lock and key and that P.W.1 was sleeping along with the mother of the accused and the accused was sleeping in the first floor and that the accused were responsible for abortion which took place to P.W.1. She has further deposed that P.W.1 has also informed about the cruel treatment of A2. She also speaks about the frequent quarrel between P.W.1 and the accused.

7. P.W.4 is the brother of P.W.1. P.W.4 also speaks about the marriage between P.W.1 and A1 and also about the presentation given to

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P.W.1 at the time of marriage and that P.w.1 had written a letter Ex.P.3 stating that A1 had beat her, demanding Hero Honda Motor Cycle and on one occasion while he visited the house of P.W.1, A1 has necked him out of the house and that he also speaks about the cruel attitude of A1 towards P.W.1.

8. P.W.5 is a neighbour of P.W.1. P.W.5 deposed to the effect that P.W.1 used to complaint about her husband and that P.W.1 informed her about the torture received at the hands of the accused and also about the demand of dowry.

9. P.W.6 is the mahazar witness, who would depose that Ex.P.2 to Ex.P.8 were seized on 25.7.1996 by the police from the house of Magesh and that Ex.P.9 is seizure mahazar in which he has signed as a witness.

10. P.W.7 is the Inspector of Police of Women Police Station. She would state that P.W.1 came to the station on 8.7.1996 at about 11.15 hours and preferred a complaint for demanding dowry by her husband and her mother-in-law to the tune of Rs.50,000/- cash and a water heater and also a Hero Honda motor cycle and on the basis of the complaint she registered a case in Cr.No.3/1996 under Section 498(1)A IPC and under Section 4 of Dowry Prohibition Act 1961 r/w 34 IPC. Ex.P.10 is the FIR. She has examined the witnesses and visited the place of occurrence and seized Ex.P.2 to Ex.P.8 letters and seizure mahazar is Ex.P.9. P.W.8 is the successor of P.w.7, who had taken up further investigation and after completing the investigation, she has filed charge sheet against the accused.

11. When incriminating circumstances were put to the accused, they denied their complicity with the crime. On the side of the accused D.W.1 and D.W.2 were examined and Ex.D.1 to Ex.D12 were marked. After going through the oral and documentary evidence let in before the trial Court, the learned trial Judge has held that A2 is not guilty under the charge levelled against her and consequently acquitted A2, but convicted A1 under Section 498 A IPC and sentenced him to undergo imprisonment till raising of the court and a fine of Rs.5,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, A1 has preferred this appeal.

12. Now the point for determination in this appeal is whether the conviction and sentence under Section 498 A IPC against A1 is sustainable?

13.The Point:- Section 498 A IPC runs as follows:-

> "Whoever, being the husband or the relative of the husband of a women, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
> Explanation – For the purpose of this section, "cruelty" means

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(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

The allegation against A12 by her wife P.W.1 is that A1 often harassed her to give cash of Rs.50,000/- and also a Hero Honda motor cycle and a water heater. Even though P.W.2 to P.W.4 are relatives of P.W.1, P.W.5 is a neighbor who is not a relation of P.W.1. P.W.5 has deposed to the effect that only at the instance of P.W.1 she gave a telegram to the brother of P.W.1 stating that A1 had intimidated P.W.1 to kill and there is no safety for her life. P.W.5 has categorically stated that P.W.1 has informed her about the way in which A1 has treated P.W.1 so cruelly and also demanding a motor cycle and money towards dowry. There is no motive attributed upon P.W.5 to depose falsehood against A1. The evidence of P.W.1 has been corroborated by P.W.2 to P.W.5. Only under such circumstances, the learned trial Judge has come to a conclusion that an offence under Section 498 A IPC has been proved against A1. But the learned trial Judge has taken a lenient view while awarding sentence to A1. The learned trial judge has given punishment of imprisonment till the raising of the Court and also a fine of Rs.15,000/- with a direction that if the fine amount is paid, the same shall be given to P.W.1 towards compensation under Section 357(1) of Cr.P.C. I do not find any reason to interfere with the well considered judgment of the trial Court, which does not warrant any interference from this Court. Point is answered accordingly.

14. In the result, the appeal is dismissed confirming the decree and judgment in C.C.No.245/1997 on the file of the Court of Chief Judicial Magistrate, Puducherry.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To,

1. The Additional District Judge-cum-
   The Chief Judicial Magistrate,
   Puducherry.

2. -Do-Through The Chief Judge,
   Pondicherry.

3. The Station House Officer,
   All Women Police Station,
   Pondicherry.

4. The Public Prosecutor,
   High Court, Madras.

1 cc To Public Prosecutor (Pondicherry), Advocate, SR.5256.
1 cc To Mr.C.P.Palanichamy, Advocate, SR.5111.

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TEJ(CO)
RVL 05.02.2007

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